

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TILMAN DUNBAR, JR., et al.

v. : Civil Action No. DKC 20-0738

BIEDLINGMAIER, et al. : :

MEMORANDUM OPINION

On December 28, 2020, Defendants Corporal Ryan Biedlingmaier ("Corporal Biedlingmaier"), the Montgomery County Police Department ("MCPD"), and Montgomery County, Maryland ("the County"), collectively ("the County Defendants") filed the presently pending motion to dismiss Plaintiffs' first amended complaint. (ECF No. 33). Plaintiffs responded on January 11, 2021, (ECF No. 37), and the County Defendants replied on January 19, 2021. (ECF No. 39). On March 24, 2021, this court issued an order directing Plaintiffs to clarify the allegations contained in their first amended complaint within fourteen days:

Despite Plaintiffs' vigor in pursuing their claims, they have failed to articulate clearly their theories of liability. The amended complaint contains internal inconsistencies as to whether they allege that Corporal Biedlingmaier viewed the Kaiser Permanente surveillance footage prior to seeking the warrant. Certain allegations in the amended complaint also conflict with arguments asserted by Plaintiffs in their opposition to the motion to dismiss. (ECF No. 37-1). Before the court can resolve the motion to dismiss, Plaintiffs will be required

to clarify whether they contend that Corporal Biedlingmaier did review the surveillance footage as alleged in (ECF No. 30, at 5, ¶ 1) ("That upon information and belief the following occurred after Corporal R. Biedlingmaier saw the Kaiser Permanente surveillance video and spoke to its personnel regarding the theft scheme") or did not review the footage as alleged in (ECF No. 30, at 6-7, ¶ 1. d) ("It does not appear Corporal Biedlingmaier viewed the surveillance video") and (ECF No. 37-1, at 9) ("He had access to the video recordings. He failed to request to review the video recordings. The lack of review of the video recordings . . . was unreasonable.").

(ECF No. 44). Pursuant to the court's order, on April 2, 2021, Plaintiffs filed a second amended complaint, although it was docketed as a "Response to Order" rather than as a second amended complaint. (ECF No. 45). The second amended complaint now asserts that "Corporal Biedlingmaier viewed the surveillance video, and knew or should have known the arrests [sic] of Plaintiff was illegal, invalid, and unconstitutional since it was clear the person on the video was not the Plaintiff." (ECF No. 45, at 6). In light of the nature and extent of the changes in the second amended complaint, the County Defendants' motion to dismiss will be denied as moot. Defendants may file a renewed motion to dismiss or responsive pleading within 21 days of the date of this court's order. A separate order will follow.

/s/

DEBORAH K. CHASANOW
United States District Judge